IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.4664 OF 2005.

Prabhavati C.Sonawale ... Petitioner.
V/s.
The Special Recovery Officer,
Oen Co-op. Urban Bank Ltd. ... Respondents.

Shri Kishor Patil for the petitioner.

Shri M.H.Solkar, AGP for the respondent No.3.

Shri Raja Ghadge for V.M. Joshi for respondent No.2.

CORAM : V.C.DAGA, J.

DATED : 6.3.2006.

P.C. :

. Heard learned Counsel for the petitioner.

2. This petition is directed against the order dated 7.6.2005 passed by the Joint Registrar, Co-operative Societies, refusing to entertain revision application on the ground that there is no compliance of section 154 (2)(a) of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short).

3. Perusal of the order would show that revision was not entertained against recovery certificate under section 101 of the Act, for want of 50% deposit of the amount under recovery certificate. During the course of hearing, it transpired that the present petitioner is the owner

of the premises being Gala No.12, situate on the ground floor of Dharamraj Palace at Karjat, District Raigad.

4. The son of the petitioner - Shri Nitin Pandit is occupying the said shop as a licensee of the premises. Shri Nitin Pandit appears to have suffered an order of recovery under recovery certificate issued under section 101 of the Act. In order to effect recovery of the amount due his shop premises has been attached by the recovery officer.

5. The petitioner submits that the attached shop; not being a property of Shri Nitin Pandit, the same could not have been attached by the respondent No.1. Petitioner further submits that at any rate, the objection filed by the petitioner ought to have been investigated. The same could not have been rejected by the Recovery Officer. He submits that the shop has now been sealed.

6. Having heard parties, it is clear that immovable property, namely; shop premises is not a subject matter of attachment and recovery in the recovery proceedings because, borrower- judgment debtor is not the owner of the immovable property. What must have been attached is the interest of the lisencee therein or the goods lying in the said shop premises.

7. In the above view of the matter, the petitioner cannot seek removal of the seal put on the shop. So long as shop is occupied by the licensee, he is entitled to possess the same. However, it would be open for the petitioner to adopt any other proceeding against the licensee in accordance with law to claim possession of the shop premises. The relief claimed and prayer made is devoid of any substance. The petition stands disposed of in terms of this order with no order as to costs.

(V.C.DAGA,J.)